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STATE OF CALIFORNIA

State Energy Resources
Conservation and Development Commission

In the Matter of:	)	
	)	
Stakeholder hearings on	)	
Energy Facility Permitting and	)	**Docket No. 99- SIT-6**
Changes to the Siting Process	)	
	)	
	)	

Comments of Robert F. Williams, President
Williams Technical Associates (WTA)
Intervenor in the Matter of Metcalf Energy Center 99-AFC-3
And
Interested party in the Stakeholder Hearings on
The Energy Facility Permitting and
Changes to the Siting Process.

March 15, 2000

Introduction and Summary

1. Background. The author participated in the Energy Facility Siting Committee (EFSC) hearings in Sacramento on December 13, 1999, and January 25, 2000, and responded to the Public Advisor s Intervenor Survey, December 1999. The author is a licensed Professional Engineer in the State of California, with 35 years experience in the power plant industry. The authors special expertise relates to nuclear waste disposal, and nuclear facility design, economics and licensing.

2. Endorsement of LADWAP submittal of March 7, 2000. After observing and participating in the hearings of the EFSC, I reluctantly agree with the recommendation of the City of Los Angeles Department of Water and Power, to consolidate the powers of the CEC in the CPUC. Accordingly, I recommend the legislature propose legislation, and hold hearings on the LADWAP proposal. The reasons in addition to those offered by LADWAP are as stated in the paragraphs below.

3. CEC has shown blatant disregard of the hearing record. CEC in this hearing in particular has failed to properly address the comments and issues raised in the hearing record. The record of public hearings, and the Intervenor Survey Conducted by the CEC Public Advisors Office in December 1999 are not cited in the draft report to the legislature. The Public hearings of the CEC on this matter are not listed in the California Energy Commission Site index. The manner in which the draft report is indexed, together with the transcript of the hearing record, makes it very difficult to find the hearing record. For convenience, please see

http://www.energy.ca.gov/reports/2000-02-29_700-00-001.PDF

Many users will receive a computer diagnostic when using this URL, and will have to scroll past a lot of unrelated entries on the energy commission home page to find the hearing record. The hearing record does not appear when using the CEC search engine. This is apparently because the report title is a number.

Many of the recommendations submitted by CEC reflect a lack of consideration, if not a total disregard of the hearing record. The positions of those who testified including members of the industry as well as members of the public, are not faithfully reflected in the report to the governor.

4. Misreading legislative intent. The CEC staff appear to take the Legislatures desire for rapid licensing of proven technology, for rapid licensing of every plant, and ignore the hearing record. The hearing record contains considerable discussion of how the maturity of plant technology, and the degree of site control, and conformance with local ordinances and regulations could be used to establish a 12 month process for standard plants with owners site control and a site meeting local ordinances and regulations. A longer process, perhaps 24 months, would be required for first of a kind plants, and where amendment to local general plans, ordinances and other regulations (LORS) was required.

Despite the hearing record, and apparently sound logic that standard plants cost less to review, and the CEC staff is overloaded by the current influx of non standard applications, the CEC proposes to try to maintain the accelerated schedule for every plant. One process fits all, even for the plants that most of the participants in the siting hearing process agreed should have and indeed require a longer schedule.

If the CEC were to consult with legislators, it is likely they would find there is agreement with the hearing record. Not all plants have to be on the fast track. Some plants, first of a kind in technology, requiring rezoning or other changes, require longer to license, and cost more in staff time and resources. The process should reflect this. Most legislators are realistic. They do not require one licensing schedule meet all plant types, even all CCGT plant types, if there are significant differences in technology and site characteristics. **One size, e.g. one process of 12 month duration, that fits all plants is not required.**

5. Eminent domain. Among the most egregious examples of disregard of both the hearing record, and the logic of the CEC s own writing, is the recommendation on granting the power of eminent domain to the CEC, as if the matter were similar to transmission lines.

The draft report at page 58 brings eminent domain into the discussion through the back door arguing that eminent domain should be required for transmission line stability even through little analysis in the record supports this position. Then in the third paragraph, page 58, some of the evaluation participants also recommended that the agency responsible for permitting transmission lines should also have authority to grant eminent domain.

This terse sentence leads to the second recommendation under issue 18 on page 58.

2. The Legislature should include eminent domain authority with the Commission s transmission line permitting authority.

> Rationale: The Commission continues to believe that state permitting authority for large energy facilities both power plants and transmission lines - should be consolidated in one state agency. The benefits of consolidation would include: 1) reducing the fragmentation of the current regulatory process; 2) creating a level playing field for all project applicants; 3) facilitating the consideration of alternatives, 4) ensuring consistency of review; 5) avoiding duplication of the siting expertise needed to evaluate large energy facilities; and 6) increasing the efficiency of agency and ISO coordination.
>
> Eminent domain is not an issue to be taken lightly and requires further discussion. It is very likely that the construction of new transmission lines in California required for maintaining system reliability will require the exercise of eminent domain. Conceptually, the public agency responsible for permitting transmission lines should have authority for eminent domain.

The commission staff, does not cite, and appears to ignore the colloquy in the January 25, 2000 hearing in which Commissioner Laurie acknowledged that he knew of no precedent in common law for a public taking for the benefit of a private, for profit company. [See hearing transcript at beginning at page 55. Presiding member Laurie s comment is at page 58:

In fact, nowhere in law does it allow for private taking of private land. All taking is in the hands of the government. Who knows, where do the utilities get their taking authority? Is it under a PUC ruling? Or is there specific constitutional authorization for that? Does anybody know?

Mr. Alvarez: I believe it is under the PUC ruling under the essential services doctrine in terms of just and reasonable acquisition of property for a public utility.

Elsewhere in the draft report to the governor, (pages 52 to 56, issue 16), much is made of the fact that there is no longer a need analysis on siting cases. A serious point is raised in the last paragraph on page 53,

> In addition, if there is an unavoidable significant adverse environmental impact or the project is in non-conformance with a state of local legal requirement, the project applicant may request that the commission override the impact of non-conformance. **To override an unavoidable adverse impact, the Commission must determine that the benefits of the proposal outweigh the unavoidable adverse impact. To override a non-conformance, the Commission must determine that the proposed facility is required for public convenience and necessity and there are not more prudent and feasible means of achieving such public convenience and necessity. (PRC/25525) [Emphasis added]**

The Commission is more sensitive to the resource issue than to the substantive difference between a public taking of private property for the benefit of a private for profit company. The report goes on to argue that the Commission needs more money for staff to make this case because the resources formerly used for needs assessments have already been redirected or eliminated

In short, there is a massive lapse in logic. Even though the process no longer considers the need for power, the CEC should nevertheless be granted the right to make findings involving eminent domain as if there were a showing of public necessity and convenience, and despite the fact that there is no constraint on the profit a private merchant power vendor may reap from this finding.

6. Endorsement of CARE recommendations. This commentor endorses the modified legislative recommendatios of Californians for renewable energy. The proposed draft legislative recommendations, together with changes proposed, are included as attachment 1.

Dated: March 15, 2000

Respectfully submitted:

___(original signed by) ___
Robert F. Williams